THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.11254 OF 2005

Dated: 30th August, 2005.

Between:-

1. Abhyudaya Educational Society, Sirpur Kagaznagar,
having registration No. 1168 of 1987, represented by
its President, Sri K.V.Narayana Rao.

2. K.V.Narayana Rao s/o Sri k.Venkata Reyudu,
aged about 70 years, President, Abhyudaya
Educational Society and Chairman and Secretary
Cum-Correspondent, Sirpur Kagaznagar Employees,
Degree College, Sirpur, Kagaznagar, Adilabad District. ..Petitioners

A N D

1. The State of Andhra Pradesh,
represented by its Principal Secretary Higher
Education, Secretariat, Hyderabad and Others

…Respondents

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ORDER :

1. This Writ Petition is filed by Abhyudaya Educational Society, Sirpur Kagaznagar represented by its Chairman and Secretary-Cum-Correspndent, Sri.K.V.Narayana Rao questioning G.O.Rt.No.403, Higher Education (V.C.I) Department, Dated 9-5-2005 issued by 1st respondent and proceedings Rc.No.3078/PC.III-3/93, dated 26.8.1994 issued by Commissioner of College Education and competent authority-2nd respondent.

2. The background facts of the case-giving rise to filing of this writ petition are:

A society was established in the name of Sirpur Kagaznagar Employees Educational society with the object of establishing a degree college. Necessary permission was obtained from the State Government for establishing a Degree College. The State Government issued G.O.Ms.No.943 Education (J) Department, Dated 26.11.1982 permitting the degree college to be established at Sirpur Kagaznagar during the academic year 1982-83. The college started functioning from ESI TB Annexe Building. In the year 1987 the college reached a stage of virtual closer, according to the petitioners. The elders of the Society requested K.V.Narayana Rao-2nd petitioner who happened to be local MLA as well as chief-whip of the Government then in power to take over the responsibility of reviving the institution and providing for the infrastructural facilities in the degree college. K.V.Narayana Rao-2nd petitioner along with other members established Abhyudaya Educational Society, Sirpur Kagaznagar and got registered on 18.5.1987 with Registration No.1168/87. The former management of the Sirpur Kagaznagar Employees Degree College (for short SKE Degree college) made over the management of the college to the newly formed Abhyudaya Educational Society.

After the Abhudaya Educational Society took up the management of SKE Degree college, foundation stone for construction of the building to house the degree college was laid at Trishul Pahad area on 17.7.1988. The strength of the college in the year 1987 was around 400. The strength increased from time to time and reached 1350. The college is affiliated to Kakatiya University, Warangal and it has been subjected to inspections by the University authorities. The State Government passed orders in G.O.Ms.No.170 Education Department, dated 12.7.90 admitting some of the sections of the degree college to grant-in-aid w.e.f. 16.4.90. The State Government also admitted some more sections to grant-in-aid in G.O.Ms.No.247 Education Department, dated 4.7.1991. The Government issued GO.Rt.No.2116 Education (CE.II.2) Department, dated 29.12.1993 appointing K.Ambereesh, I.A.S, Deputy Secretary to the Government, Education Department to conduct an enquiry and submit a report with reference to the allegations leveled against the college management in general and against K.V.Narayana Rao in particular. The Enquiry Officer inspected the institution on 3.1.1994 and undertook a detailed enquiry in the matter and submitted his report. He found fault with the management for collecting college development fund from the students or their parents. A show cause notice came to be issued as to why the management of the petitioners college should not be suspended. The 2nd petitioner filed W.P.No.5169/94 questioning the show cause notice issued Rc.No.3078/PC.III.3/94, dated 1-3-1994. The said writ petition came to be disposed of on 24.3.1994 giving liberty to K.V.Narayana Rao-2nd petitioner to file explanation and until such time the respondents therein were directed not to interfere with the management of SKE Degree college. Subsequently the Commissioner of Collegiate Education and competent authority passed orders on 26.8.1994 suspending the management and appointing the Project Officer, ITDA, Utnoor, Adilabad as a Special officer to manage the affairs of the petitioners college. The order passed by the Commissioner of Collegiate Education came to be challenged in W.P.No.14900 of 1994. Simultaneously, a revision was also filed before the State government on 30-1-1995. Pending revision, interim stay of the proceedings of Commissioner of Collegiate Education dated 26.8.1994 has been granted. An audit party of the Collegiate Education Department audited the accounts of the college and finalized its report with reference to the academic years 1990-91 and 1991-92. The principal allegation against the management of the college is collection of development fund from either the students or their parents. The development fund came to be deposited in account No.5573 in the year 1994-95.

From 1995-96 the voluntary contributions made towards college development fund have been credited to the account of Abhyudaya Educational Society. The revision filed by K.V.Narayana Rao- 2nd petitioner came to be rejected by the Government through G.O.No.960, Education Department, dated 28.12.2004. A direction has been issued to the Director of Collegiate Education to take necessary action for implementing the orders issued earlier on 26.8.1994 appointing Project Officer, ITDA, Utnoor to be the Special Officer to take charge of the management of the college. Assailing the orders passed in the revision, K.V.Narayana Rao filed W.P.No.25181 of 2004. The said writ petition came to be disposed of on 28.1.1995 with a direction to the State Government to conduct fresh hearing in the matter after giving opportunity to K.V.Narayana Rao-2nd petitioner and till then interim orders passed suspending the G.O.Ms.No.960, dated 28.12.2004 are allowed to be continued. The State Government after making available copies of the reports submitted by the Regional Joint Director of Higher Education, Warangal as well as Joint Collector, Adilabad to K.V.Narayana Rao-2nd petitioner passed orders through G.O.Rt.No.403, dated 9.5.2005 rejecting the revision and thereby directed the Project Officer, ITDA, Utnoor to take over the management of the SKE Degree College, Sirpur Kagaznagar and manage the same as its special Officer. Hence, this writ petition with the following prayer:

It is prayed that this Honourable Court in the interest of justice be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Certiorari as under:

a. Call for records relating to and connected with G.O.Ms.No.403 Higher Education (VCI) Department, dated 9.5.2005 of the 1st respondent and the Proceedings Rc.No.3078/PC.III-3/93, Dated 26.8.1994 of the 2nd respondent and quash or set aside holding he same as illegal and unsustainable.

b. Direct the respondents not to interfere with the right of the petitioners to manage and run the Sirpur-Kagaznagar Employees Degree College, Sirpur Kagaznagar, Adilabad District and pass such order or further orders as are deemed fit and proper in the circumstances of the case.

3. 1st respondent filed counter affidavit. One M.Devdas has sworn to the counter affidavit. The counter affidavit in brief is :

Kakatiya University Committee report reads that there is no adequate accommodation and facilities, which ought to have been provided as per the norms of the University for a Degree college. The selections made in the petitioners' college are not as per the prescribed selection procedure. The management may appoint as many part time lecturers as they like for meeting the workload but they have to be paid only from their own funds and not from the college development fund. Obviously, the management has paid the salaries of the part time lecturers and salaries of un-aided lecturers from the college development fund, which was forcefully extracted from the students at the time of admission in violation of rules and regulations. This is one of the charges which was proved, on the basis of which the management was suspended on 26.8.1994 by the Commissioner of Collegiate education. A revision was preferred and the same ended in dismissal and thereupon the petitioners carried the matter to the High Court by filing writ petition. Serious allegations against the management of the degree college have been made; such as mismanagement of the college funds to the tune of Rs.1,65,000/-, collected as donation from the students at the time of admission illegally, mis-utilizing the amount of Degree College towards payment of corpus fund for Abyudaya Junior College (unaided) and also misusing the special fees. Sri.K.Ambarish, I.A.S. the then Deputy Secretary to the Government enquired into the allegations against the college management with regard to misuse of funds by K.V.Narayana Rao-2nd petitioner and submitted a report to the Government on 6.1.1994. Basing on the findings of the enquiry report, the Director of Collegiate Education issued a charge-cum-show cause notice to the management as to why action under section 24(3)(a) of A.P. Education act, 1982 should not be taken suspending the management of the college and appoint a Special Officer besides recovery of the amounts which were misappropriated and misused by the management. Against the show cause notice, the 2nd petitioner filed W.P.No.5169 of 1994 and thereafter the said writ petition came to be disposed of at the admission stage on 24.3.1994. In obedience of the orders of the court in the said writ petition, a copy of the enquiry report was furnished to 2nd petitioner and thereupon the second petitioner submitted his explanation-dated 8.7.1984. Certain complaints were received from the students against the management of the petitioners' college and thereupon the Director of Collegiate

Education was directed to conduct enquiry. Y.Srinivas Rao, the then Joint Director conducted enquiry on 8-8-1995 and submitted report on 18-8-1995. A show cause notice was issued to the petitioners' on 14-9-1995 as to why action should not be taken under Section 24(3) (a) of A.P. Education Act, 1982. The petitioners submitted explanation on 20-10-1995. The Government by order dated 20-10-1995 suspended the operation of the proceedings dated 14-9-1995. The Regional Director of Higher Education, Warangal, conducted enquiry and submitted report on 31-8-1998. While so, students submitted complaints on 25-7-2004 during Rajiv palle Bata. The Joint Collector was directed to enquire and submit a report. Accordingly, he enquired into the allegations and submitted a report to the Director of Collegiate Education on 7-10-2004. The Government by order dated 28-12-2004 under G.O.Rt. No. 960, Higher Education Department, rejected the revision petition thereby confirmed the earlier order dated 26-8-1984 of the Director of Higher Education and appointed Project Officer, ITDA Utnoor as Special Officer for taking over the management of the college. The 2nd petitioner filed W.P.No.25181 of 2004 questioning the orders passed in revision. The said writ petition came to be disposed of on 28-1-2005 directing the Government to rehear the petitioners. Pending revision, the petitioners submitted representation dated 9-3-2005 for conducting Special Audit of the accounts of the college in respect of collection, expenditure and proper utilization of the Special Fee etc., Accordingly a Special Audit Team under the supervision of Chief Auditor was deputed to the college to conduct audit from 21-3-2005 to 31-3-2005. The Special Audit Report came to be submitted on 16-4-2005. Taking into consideration all the material brought on record and the reports submitted by the Enquiry Officers and also the Special Audit Report, the Government rejected revision filed by the petitioners on 9-5-2005 vide G.O.Rt No.402 Higher Education (VC-I) Department. It is specifically averred in the counter affidavit that as per Section 6 (2) and 7(2)(3) of Regulation of Admissions and Prohbition of Capitation Fee Act, 1983, aided college is not permitted to collect donations or college development fund and violation of which empowers the Government to take necessary action under Section 24 of the Education Act, 1982. A specific averment has been made in the counter affidavit that the Special Officer has already taken charge of the management of the college on 13-5-2005 and that the petitioners have taken all the service records of the aided lecturers from the college premises and fail to hand over the same to the Special Officer in spite of written requests.

4. Heard the learned counsel for the petitioners and the learned Government Pleader for Higher Education appearing for respondents 1 to 3.

5. The learned counsel appearing for the petitioners' submits that the allegation made against the management of the petitioners college are filmsy and they do not warrant suspension of the management of the petitioners college. In elaborating his arguments, he submits that the petitioners college is the only college in private management in Adilabad District which is well equipped with instructional and instrumental facilities. He would further submits that the functioning of the college has been well appreciated by the Kakatiya University to which it is affiliated and that lapses pointed out in the enquiry reports are trivial in nature. His further submission would be that Principal post could not be filled up because of the college education not according necessary permission to fill up the vacancy and so, also with regard to other vacant posts in teaching and non-teching staff. Reference has been made to letter issued by the office of the Director of Collegiate Education, A.P. Hyderabad dated 21-3-1992 and letter dated 13-4-1994 addressed by the 2nd petitioner as Chairman/Secretary cum Correspondent of the college to the Commissioner of College Education, Government of Andhra Pradesh. In the first referred letter, Correspondent of the College has been asked to stop recruitment to the posts of Attenders/Record Assistant etc., and in the second referred letter, the Chairman/Secretary cum correspondent of the college requested the Commissioner of Collegiate Education to accord permission for filling up the post of Principal as early as possible. It is also submitted by the learned counsel that neither the Government nor the Commissioner of Collegaite Education is concerned with any mis-utilization of the funds of the college and it is domain of the society which runs the college to take necessary action against the persons concerned. To buttress his submissions, reliance has been placed on the decisions of our High Court in ***K.Rama Sastry Vs. Government of Andhra Pradesh*** , in ***Pakalapati Satyanarayana Raju Vs. Government of A.P. rep. By its Secretary, Education (EE.2) Detp. Hyderabad*** and the decision of Supreme Court in ***Mohinder Sing Gill Vs. The Chief Election Commissioner, New Delhi.*** In the decision 1st cited supra, it has been held that the competent authority under the Andhra Pradesh Education Act, 1982 is not competent to appoint management to private schools and in case of dispute it has to be decided by a Civil Court. Para 23 of the judgment needs to be

noted and it is thus:

> *"The conspectus of various provisions of the Act and Rules shows that the educational agency, the management and the manager (be in secretary or correspondent) are different and distinct bodies/entities. The educational agency is a person (at present it can only be a group of persons, whatever be the nature of such group) or an association, which may have one or more educational institutions under their control. The management is the governing body for each school or educational institution to be constituted by the educational agency and approved by the competent authority in accordance with the Rules. Each management has to nominate or appoint the manager for each school to manage the affairs of the institution under sub-section (2) of Section24 of the Act. In case the educational institution is established by a single individual or a person prior to coming into force of Andhra Pradesh Education (Amendment) Act, 1987, the law recognizes such person or individual as the educational agency or/and the management. It is possible that the same person may request the competent authority to recognize such person along as the manager-correspondent. If there be more number of educational institutions under such person, it is possible for the single person management to appoint different managers for different educational institutions. After coming into force of the Act and the Rules even such individual person has to comply with Rule 15 in constituting a governing body having regard to the intention of the Act and the Rules of entrust the function of advising the educational agency to the governing body. The controversy in this case needs to be resolved in the above statutory environment".*

In the second cited decision, it has been held by this Court that in the matter of appointment and removal of manager/correspondent of private educational institution, management alone has got power to appoint a correspondent.

In the third cited decision, the Supreme Court held when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. Para 8 of the judgment needs to be noted and it is thus;

> "*The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at P.18):*
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> *Public orders publicly made, in exercise of a statutory authority can not be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".*

6. The learned Government Pleader for Higher Education appearing for the respondents submits that though the management of the college has been suspended by the order of the Commissioner of Collegiate Education on 26-8-1994 vide ROC 3078/PC.III-3/93, the amanagement of the college, on some pretext or the other, dragged on the matter for nearly 11 years and ultimately a final order came to be passed by the Government on 28-12-2004 vide G.O.Rt. 960. She further submits that the petitioners once challenged the order passed by the Government on 28-12-2004 by filing W.P.No.25181 of 2004. The said writ petition came to be disposed of giving specific direction to the 2nd petitioner to appear before the Revisional Authority on 9-3-2005. She would also contend that the 2nd petitioner himself requested for Special Audit and the Revisional Authority, acceded to his request and accordingly, a Special Audit came to be conducted. The Revisional Authority, after taking into consideration the earlier enquiry reports and the special audit report, passed orders on 9-5-2005 . The Government issued G.O.Rt. No. 403 confirming the order of suspension of the Management of petitioners college and directed the Project Director Integrated Tribal Development Agency to act as Special Officer to take charge of the management of the college. To put it aptly, her submission is that the Revisional Authority has considered the material brought on record in right perspective and passed the roders impugned in writ petition and therefore, the same

is legal and proper. In support of her submission, she refers Sections 24,48 of the A.P.Education Act, 1982 and Sections 6 and 7 of A.P. Educational Institutions (Regulation, appointment and Prohibition of Capitation Fee) Act, 1983.

7. It is contended by the learned counsel appearing for the petitioners that the management of the college withdrew interest accrued on corpus amount on obtaining permission from the Competent Authority. At the first blush the arguments appears to be sound, but, on close scrutiny the same is liable to be rejected for the reason that what has been permitted by the competent authority is to withdraw the interest accrued on the deposit to the extent of Rs. 1,41,100/- and what is pointed out in the audit is that the management withdrew Rs. 3,25,000/- during the year 1991 to 2003-04. Admittedly, there is no authorization for the managing committee of the college to withdraw the interest accrued on the corpus fund subsequent to 1991.

8. An argument has been advanced by learned counsel appearing for the petitioners that one of the grounds i.e. not filling the post of Principal or the posts of non-teaching as well as teaching staff was due to non-approval of appointment/not granting clearance and since that ground fails, it could not be predicted as to what extent the irrelevant ground would have influenced the formation of opinion and hence the order impugned in the writ petition is vitiated. In my considered view this principle which was applied to the case of preventive detention could not be extended to other cases.

9. Since ages philanthropic individuals and groups of individuals established private educational institution as charity even when an individual all alone established a school for imparting education, there is no profiteering motive. Imparting education has never been treated as trade or business in India. It has been treated as a religious charity. It has been treated as a charitable activity. But, never as a trade or business. A.P. Education Act, 1982 was enacted to consolidate and amend the laws relating to educational system in the state of Andhra Pradesh for reforming, organizing and developing the said educational system and to provide for matters connected therewith or incidental thereto.

10. The Society has been established in the name of Sripur Khagaznagar Employees Society with the object of establishing a decree college. The State Government issued G.O.Ms. No. 943 Education (J) Department, dated 26-11-1982

permitting the degree college to be established at Sripur during the academic year 1982-83. It appears the management of the Sirpur Kagaznagar Employees Degree College (for short 'SKE Degree College) made over the management of the college to Abhyudaya Educational Society. Certain allegations were made against the managing committee of the college with regard to misuse of the funds of the college. An Enquiry Officer came to be appointed. Basing on the Enquiry Report, a show cause notice was issued to the management of the college on 1-3-1994. Six charges have been leveled against the management of the college. The first charge relates to misappropriate of the fund of college to a tune of Rs. 1,50,000/-. The second charge relates to misappropriation of the Special Funds of the college to a tune of Rs. 15,000/-. The third charge relates to misuse of Special Fee Fund of the college. The 4th charge relates to indiscriminate collection of donation from the students at the time of the admission. The fifth charge relates to misuse of the funds of the degree college towards payment of Corpus fund for Abhyudaya Junior College. The sixth charge relates to non-providing basic amenities to the staff and students. The management of the petitioners college submitted explanation. The Enquiry Officer conducted a detailed enquiry and submitted a report on 6-1-1994. After furnishing Enquiry Report and on receipt of the explanation of the management of the college, proceedings came to be issued by the Commissioner of College Education and Competent Authority on 26-8-1994 vide Rc.No. 3078/PC.III-3/93, suspending the management of the petitioners' college and appointing the Project Officer, ITDA, Utnoor as Special Officer. The 2nd petitioner carried the matter in revision before the Government and the said revision ended in dismissal. Thus this writ petition.

11. The 2nd petitioner-K.V.Narayana Rao-Chairman and Secretary-cum-Correspondent of the college approached this Court thrice on earlier occasions. Firstly, when show cause notice was issued to him (W.P.No. 5169 of 1994). Secondly, questioning the order passed by the Commissioner, Collegiate Education on 26-8-1994 (W.P.No.14900 of 1994). Thirdly, questioning the dismissal of the revision order dated 28-12-2004 (W.P.No.2158 of 2005). The present writ petition virtually amounts to fourth round of litigation. It can be said without any controversy that though the management of the petitioners college came to be suspended in the year 1994, it continued to manage the affairs of the college under the interim orders

either granted by this Court or by the Government till 13-5-2005. I do not wish to make the judgment bulky by referring to various reports which manifest the mis-management of the funds of the college by the managing committee. It is suffice to refer the report submitted by the Joint Collector, Adilabad District. The principal allegation against the management is that college development fund has been collected from the students of aided sections and unaided sections. The Enquiry Officer, after considering the records placed before him and statement of M.Venkateshwarlu, Junior Assistant of the college who was receiving amounts towards college development fund and handing over the same to correspondent i.e. petitioner NO.2 herein, recorded the following finding and it is thus;

> "*From the above it is evident that the College Management has collected College Development Fund/ Donations even from the 1st year Degree students of aided sections to the tune of Rs.48,78,000/- (Rupees Forty Eight Lakhs and Seveny eight thousand only) and that too without maintaining any accounts, for the said amounts, and also without giving receipts is highly irregular and is in total violation of Government rules and it is understood that these funds are misappropriated. However, to ascertain the correct amount misappropriated, the services of a Special Audit Party may be engaged".*

12. It is clear from the report of the Joint Collector, Adilabad as to how the management collected college development fund during the years 1995-96 to 2003-04 and mis-utilized the same.

13. Under Section 24(3)(a) of the A.P. Education Act, 1982 where the competent authority satisfies that the management is responsible for the lapses or irregularities of the institution, the competent authority may, after giving to such management an opportunity to make representation and for reasons to be recorded in writing suspend the management and appoint a Special Officer till the reconstitution of the management

14. The records placed before me clearly disclose that opportunity was given to the management at every stage, therefore, the petitioners cannot complaint that they were not heard before passing the impugned order in the writ petition.

15. Under Section 6 of the Andhra Pradesh Educational Institution (Regulation, Admission, Prohibition and Capitation Fee) Act, 1983 any donation of money in

educational institution shall be made in such a manner as may be prescribed and not otherwise. Under Section 7 (3) of the Act, 1983, every educational institution shall issue receipt for fee collected by it. There are nearly three Enquiry Reports in this case. All the enquiry reports consistently say that the management of petitioners college collected the college development fee from the students of aided sections and failed to maintain the accounts and even failed to issue receipts for the amount collected from the students. The reports also revealed that fee collected from the students of the aided section have been utilized for payment of salaries to the part time lecturers etc. which is impermissible

16. The Government considered the material available on record in right perspective and dismissed the revision filed by the writ petitioners. I do not see any valid ground to interfere with the order impugned in this writ petition.

17. In the result, the writ petition fails and it is accordingly dismissed. No order as to costs.

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B.Seshasayana Reddy, J.

30th August, 2005.

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THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.11254 OF 2005

30th August, 2005.